

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSHUA LINER,

Plaintiff *pro se*,

– *against* –

KATHY HOCHUL, GOV.; OFFICER
MICHAEL DAVID 40TH PRECINCT;
JOHN DOE #1 OFFICER 40TH
PRECINCT; *AND* JOHN DOE #2
OFFICER 40TH PRECINCT,

Defendants.

ORDER

21-CV-11116 (ER)

RAMOS, D.J.:

Pro se Plaintiff Joshua Liner filed a complaint on December 27, 2021. Doc. 1. The Court directed Liner to serve on Governor Hochul and Officer David within ninety days of the issuance of the summonses. Doc. 10. Additionally, the Court warned Liner that it may dismiss his claims against Governor Hochul and Officer David if he failed to serve the summonses or request an extension before the deadline. *Id.* At the direction of the Court, the Clerk of Court issued the summonses against these Defendants on March 18, 2022. Doc. 11. Liner filed a letter with the Court on June 7, 2022 requesting a 30-day extension, and accordingly the Court extended the deadline for service to July 18, 2022. Doc. 19. In that same letter Liner informed the Court that he attempted to serve Officer David by handing the complaint/summons to his superior officer at his work address. Doc. 18 at 2. Liner stated that the superior officer declined to accept the documents, indicating that Liner had to be a licensed process server. *Id.* On July 5, 2022 a notice of appearance on behalf of Governor Hochul was entered. Doc. 20. On August

17, 2022 Governor Hochul moved to dismiss the Complaint in its entirety. Doc. 25. The motion was granted on January 23, 2023. Doc. 43.

On November 18, 2022, Liner was directed to serve Officer David no later than January 18, 2023 and warned that failure to do so will result in a dismissal for failure to execute service under Federal Rule of Civil Procedure 4(m). Doc. 38.

On December 21, 2022 Liner requested an extension of time to serve Officer David. Doc. 41. The extension was granted and a new deadline of January 20, 2023 was set. Doc. 42. To date, Liner has failed to file proof of service as to Officer David or show cause in writing why a further extension of the time is warranted.

For the reasons set forth above, the Court dismisses this case for failure to execute service under Federal Rule of Civil Procedure 4(m). Rule 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—*must* dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m) (emphasis added).

Accordingly, it is hereby ORDERED that the above-captioned action is dismissed without prejudice as to Officer David. The Clerk of Court is respectfully directed to close the case.

SO ORDERED.

Dated: January 23, 2023

New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is written above a horizontal line.

Edgardo Ramos, U.S.D.J.